

Delaware's statewide HCBS Transition Plan is currently out for public comment.

It is critical that people with disabilities, older adults, families and advocates provide their input.

- Comments must be submitted by 4:30 pm on Friday, March 6, 2015
- The state is accepting written comments by email at Sharon.Summers@state.de.us or by fax at 302-255-4425 (attention Sharon Summers)
- Comments can also be submitted by mail to:
Sharon Summers
Division of Medicaid and Medical Assistance
Planning, Policy & Quality Unit
1901 North DuPont Highway
P.O. Box 906
New Castle, Delaware 19720-0906
- The state will also hold two input sessions for the public:
 - **Monday February 23, 2015 from 3-5 pm**
Delaware State Police: Troupe 2
Robert Paris Community Room
100 Lagrange Ave
Newark, DE 19702
 - **Friday, February 27, 2015 from 1-3 pm**
Del-Dot Administration Center
800 Bay Road
Dover, DE 19904

To assist in commenting, below is a brief analysis of the plan.

The full transition plan is available at:

http://dhss.delaware.gov/dhss/dmma/files/de_statewide_transition_plan.pdf

Information for advocates about the HCBS rules generally is available at
www.hcbsadvocacy.org.

Delaware's Statewide HCBS Transition Plan covers HCBS services provided under the Division of Developmental Disability Services (DDDS) 1915(c) Waiver and the Diamond State Health Plan (DSHP) (the state's 1115 demonstration).

There are many positive elements of the transition plan that Delaware should be commended for:

- The state has committed to strong and ongoing engagement of stakeholders. In addition to taking and incorporating public comment into the creation of the Statewide Transition Plan (p.39-42), the plan specifically incorporates stakeholder groups -- the Governor's Advisory Council (for the 1915(c) Waiver) and the Governor's Commission on Community Based Alternatives for Individuals with Disabilities (for the DSHP) -- as a steering committee for the implementation of the rule. These stakeholder groups will help develop assessment instruments and protocols (p.10, 25). The state will continue to seek stakeholder input throughout implementation (p.7). The plan recognizes that it provides only "high level" review and that "[m]oving forward, the specific approach and details surrounding teach program will be further defined and will reflect the input and guidance of the particular program's stakeholders." (p. 7)
- The state will use multiple sources of information to assess compliance with the rule: In addition to using provider self-assessments (which will require documentation by providers, such as from written policies and training curricula), the state will also utilize NCI data (which includes participant interviews) as part of the analysis of settings in the DDS 1915(c) Waiver and will incorporate feedback from participants receiving care. A sub-work group of the Governor's Advisory Council will conduct "look behind" review of a sample of provider self-assessments to validate for the DDS 1915(c) Waiver (p.12). In addition, if a provider self-assessment is normal, but NCI data raises concerns, the DDS 1915(c) setting will be selected for a "look behind review" even if it was not part of the selected sample (p.13).

There are several elements of the statewide transition plan raise concern:

- The time line the state has established seems very extended. The time line estimates that remediation strategies will not be implemented until February and May of 2017, leaving barely two years for the actual implementation, including the relocation of any individuals from settings that prove unable to come into compliance. We would urge Delaware to move more quickly and give the HCBS service system more time to reach compliance by 2019.
- No discussion of relocation process. The plan does not discuss a relocation process for individuals who are being provided services in settings that cannot come into compliance with the regulations. This is an important process to establish early.
- Verification of compliance through on-site visits. It is unclear from the plan if the look-behind reviews of a 20 percent sample of settings will include on-site visits as part of the assessment process, for either the 1915(c) Waiver or DSHP (we assume that DSHP will follow the 1915(c) Waiver plan and conduct look-behinds of a 20 percent sample but the plan should clarify this). On-site visits are an important part aspect of any analysis of setting compliance, and we encourage the state to include conducting on-site visits of settings in this look-behind review.

- No discussion of how Delaware will ensure that individuals have a choice of “non-disability specific” setting and private units. The HCBS Rule requires that individuals receiving HCBS services have the choice of a non-disability specific setting – that is settings that are not comprised only or primarily of people with disabilities -- and of a private room in residential settings. The plan does not discuss how Delaware will ensure that individuals have that choice. This is a fundamentally important part of the rule and people cannot be offered that choice if there is not capacity. Delaware must evaluate its current capacity of non-disability specific settings and develop a plan to increase capacity as needed to fulfill this requirement. The lack of capacity of non-disability specific settings is particularly acute for non-residential services, where the majority of the state’s current settings are disability-specific.
- Further opportunities for public comment: Delaware’s transition plan lays out the process the state will use to evaluate its current system and bring it into compliance with the HCBS rules (i.e., it is a plan to plan). CMS has made clear that the public should have an opportunity to comment when there are substantive changes to the plan. As the state completes its assessment process and begins to develop remediation plans for settings not currently in compliance, the public should have an opportunity to give input before the revised plan is submitted to CMS for approval.